REMARKS

The Present Invention

The present invention is directed to a method of inducing an immune response against an antigen in a mammal by inoculating the mammal with two different vectors encoding the antigen.

The Pending Claims

Claims 1-8, 21, and 22 are currently pending.

The Amendments to the Claims

Claim 5 is amended to point out more particularly and claim more distinctly the subject matter of the invention. Specifically, the phrases "encoding said antigen" and "other than said antigen" are deleted from claim 5, and the phrase "wherein said immunostimulatory protein is not said antigen" is added to claim 5. Also in claim 5, the word "comprises" is changed to "comprise."

The Office Action

Claim 5 has been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Claims 1-3, 5-7, 21 and 22 have been rejected under 35 U.S.C. § 103 as being unpatentable over Wang et al. (*J. Immunol., 154 (9)*: 4685-92 (1995)). Claims 1-8, 21 and 22 have been rejected under 35 U.S.C. § 103 as being unpatentable over Wang et al. in view of Zhai et al. (*J. Immunol., 156 (2)*: 700-10 (1995)).

Discussion of Rejection for Indefiniteness

Claim 5 has been rejected as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter of the invention. The Office contends that the phrase "said antigen against which immune response is to be induced" in claim 5 lacks antecedent basis. Applicants have amended claim 5 to remove the phrase at issue. Further, Applicants have amended claim 5 in accordance with the Office's suggestions to more particularly point out and distinctly claim the subject matter of the invention.

Accordingly, Applicants submit that claim 5 is definite and respectfully request withdrawal of the rejection under Section 112, second paragraph.

Discussion of Obviousness Rejection Based on Wang et al.

Claims 1-3, 5-7, 21 and 22 have been rejected as allegedly obvious in view of Wang et al.

Wang et al. has a publication date of May 1, 1995. The effective filing date of the instant application is April 22, 1996. Wang et al. is not prior art under 35 U.S.C. § 102(b) for the purposes of the Section 103 rejection because Wang et al. was published less than one year prior to the effective filling date of the instant application. The Office apparently relies on Wang et al. as Section 102(a) prior art for the purposes of the Section 103 rejection at issue. A reference cited under Section 102(a) can only be prior art if the publication date of the reference predates the invention of the claims in issue. *See M.P.E.P § 715.01.*

Applicants submit herewith a Declaration under 37 C.F.R. § 1.131, which establishes dates of conception and reduction to practice of the claimed invention which predate the publication of Wang et al. As set forth in the Rule 131 Declaration, Applicants generated a method of inducing an immune response against an antigen in a mammal, by inoculating the mammal with two different vectors encoding the antigen, before the publication date of Wang et al. As such, Wang et al. is not prior art to the instant application, and cannot properly be used as a basis of a rejection under Section 103(a).

Accordingly, the rejection under Section 103(a) should be withdrawn.

Discussion of Obviousness Rejection Based on Wang et al. and Zhai et al.

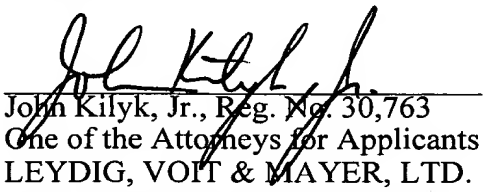
Claims 1-8 have been rejected as allegedly obvious in view of and, therefore, unpatentable over Wang et al. in further view of Zhai et al. As discussed above, however, the Wang et al. reference is not prior art to the instant application. Moreover, Zhai et al. merely teaches the administration of an adenoviral vector encoding β-gal. Zhai et al. does not teach or suggest the administration of a recombinant vector to a mammal followed by administration of a second recombinant vector encoding an antigen from the first recombinant vector, wherein the second recombinant vector is different from the first recombinant vector, as recited in claims 1-8. Accordingly, the Section 103 rejection should be withdrawn.

Conclusion

The application is considered to be in good and proper form for allowance, and the Examiner is respectfully requested to pass this application to issue. If, in the opinion of the

Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned attorney.

Respectfully submitted,



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